

The threshold issue is the Board's jurisdiction to hear this appeal. Specifically, whether claimant's application for review of the March 7, 2003 Award, which was filed by claimant on April 7, 2003, was timely.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, the Board makes the following findings and conclusions:

Any interested party has 10 days to file a written request with the Board from a final order, award, modification of an award or preliminary hearing award made by an ALJ. Intermediate Saturdays, Sundays, and legal holidays are excluded in computing this 10-day time period.<sup>1</sup> The effective date of the ALJ's award is the day after the date noted on the award.<sup>2</sup> The parties' application for review shall be considered timely filed only if received in the central office or in one of the workers compensation division offices on or before the tenth day after the effective date of the award.<sup>3</sup>

Here, the ALJ's Award was dated Friday, March 7, 2003. Thus, the effective date was Saturday, March 8, 2003.<sup>4</sup> Not counting the intermediate Saturdays and Sundays that fell on March 8, 9, 15 and 16, the claimant had until Friday, March 21, 2003, to timely file an application for review of the March 7, 2003 Award.

But claimant did not file her application for review until April 7, 2003, after the 10-day appeal time had expired. Claimant does not offer any explanation for her delay in filing her appeal, nor does she offer any legal authority that would support the Board's jurisdiction to review the Award.

In the case of *Nguyen*<sup>5</sup> the Kansas Supreme Court found that the right to an appeal in this state is neither a vested nor a constitutional right, but is strictly statutory in nature. But, where the legislature has provided the right of an appeal, the minimum essential elements of due process of law of notice and an opportunity to be heard at a meaningful time and in a meaningful manner must be satisfied.<sup>6</sup> The mere filing of an award is not notice to the parties. It is the mailing of the award and the receipt of the award by the parties that constitutes notice. The court held that where the award is misaddressed to the extent that a party fails to receive the award before the running of the 10-day time

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<sup>1</sup> See K.S.A. 2002 Supp. 44-551(b)(1).

<sup>2</sup> See K.S.A. 44-525(a) and K.A.R. 51-18-2(a).

<sup>3</sup> K.A.R. 51-18-2(b).

<sup>4</sup> See *McIntyre v. A.L. Abercrombie, Inc.*, 23 Kan. App. 2d 204, 929 P.2d 1386 (1996).

<sup>5</sup> *Nguyen v. IBP, Inc.*, 266 Kan. 580, 972 P.2d 747 (1999).

<sup>6</sup> See *Nguyen* at 588.

limitation, notice has not been provided to satisfy due process of law requirements.<sup>7</sup> No such argument has been made in this case. Claimant does not allege any delay in her receiving the ALJ's Award. Thus, the Board concludes claimant's due process rights were satisfied as claimant was provided with timely notice of the Award.

The purpose of the 10-day time period to file an appeal is to promote finality and to minimize delay in a workers compensation case.<sup>8</sup> The rule prevents an interested party from challenging the ALJ's actions long after the ALJ's award has been made. Accordingly, because claimant failed to file her application for review within the time limitations of K.S.A. 2002 Supp. 44-551(b)(1), the Board does not have jurisdiction to review the Award.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that claimant's application for review filed with the Division on April 7, 2003, was out of time and this appeal is dismissed. The March 7, 2003 Award remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: E. J. Schumacher, Attorney for Claimant  
John F. Carpinelli, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>7</sup> See *Nguyen* at 589.

<sup>8</sup> See *Gray v. Hercules Powder Co.*, 160 Kan. 767, 772, 165 P.2d 447 (1946).